STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On its own motion	**)**	
v.	**)**	**Docket No. 07-0165**
Central Illinois Light Company,	**)**	
d/b/a AmerenCILCO;	**)**	
Central Illinois Public Service Company,	**)**	
d/b/a AmerenCIPS;	**)**	
and Illinois Power Company d/b/a AmerenIP	**)**	
	)	
Investigation pursuant to Section	**)**	
9-250 of the Public Utilities Act of	**)**	
Electric Rate Design.	**)**	

Initial Brief

OF

CONSTELLATION NEWENERGY, INC.

David I. Fein
Senior Regulatory Counsel
Constellation NewEnergy, Inc.
550 West Washington Blvd., Suite 300
Chicago, IL 60661
Phone: 312-704-8499
Fax: 312-795-9270
Mobile: 312-446-2882
david.fein@constellation.com

Dated: June 29, 2007

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On its own motion	**)**	
v.	**)**	**Docket No. 07-0165**
Central Illinois Light Company,	**)**	
d/b/a AmerenCILCO;	**)**	
Central Illinois Public Service Company,	**)**	
d/b/a AmerenCIPS;	**)**	
and Illinois Power Company d/b/a AmerenIP	**)**	
	)	
Investigation pursuant to Section	**)**	
9-250 of the Public Utilities Act of	**)**	
Electric Rate Design.	**)**	

INITIAL BRIEF OF
CONSTELLATION NEWENERGY, INC.

Constellation NewEnergy Inc. ("Constellation NewEnergy" or "CNE"), by one of its attorneys, pursuant to Section 10-101 of the Public Utilities Act (the "Act") and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), hereby submit their Initial Brief in the instant proceeding regarding the Commission's investigation of all aspects of the rate design of Central Illinois Light Company, d/b/a AmerenCILCO; Central Illinois Public Service Company, d/b/a AmerenCIPS; and Illinois Power Company d/b/a AmerenIP (collectively "Ameren" or the "Company"), including all delivery services, electric supply services, and other tariffed aspects of electricity service.

I.

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD AVOID THE IMPOSITION OF REGULATORY AND INSTITUTIONAL IMPEDIMENTS TO THE EXERCISE OF INDIVIDUAL CUSTOMERS' RISK PREFERENCES

Since the inception of restructuring in Illinois, the Commission has provided a positive, steadying force in the evolution of the Illinois competitive market, encouraging parties to reach negotiated settlements, and to look for opportunities to increase certainty in the retail electric markets. The Commission has long been a leader in ensuring that Illinois utilities adhere to proper ratemaking and cost causation principles in the design of their rates. As the IIEC noted, the Commission has been, or may be, asked to abandon cost-causation principles in the instant proceeding. (IIEC Exhibit 1.0 at 33 – 35.) Constellation NewEnergy requests that the Commission continue to require Ameren to abide by those same principles and avoid the imposition of improper subsidies in Ameren's rate design. Further, the Commission should strive to avoid revisions to Ameren's rates and rate design so that non-residential customers are not harmed or impeded from accessing opportunities that are available in the competitive retail market.

Constellation NewEnergy has actively engaged in the instant proceeding by participating in workshops and settlement discussions and a review of the direct testimony and other informational filings made by Ameren. Further, Constellation NewEnergy submitted the Rebuttal Testimony of John Domagalski and Katie Papadimitriu (CNE Ex. 1.0.) CNE's Rebuttal Testimony explains why the Commission should continue to adopt polices that ensure customers' access to market solutions and should avoid adoption of any revisions that unduly limit customers' fundamental right to choose service from a retail electric supplier ("RES"). (CNE Ex. 1.0 at 74 - 76.) Specifically, the Rebuttal Testimony urges the Commission to:

- Modify Ameren's Rate Redesign Proposals to include a future sunset date upon which the Commission would return rates to their current structure if circumstances permit;
- Modify Ameren's Rate Redesign Proposals to affect only the non-bypassed portion of the bill and not to affect the Prism during the term of the existing supply contracts;
- Reject Staff's proposal to abandon utilization of the utilities' Prisms for purposes of translating the wholesale auction prices into retail rates in favor of an arbitrary across-the-board percentage increase/decrease; and
- Reject additional regulatory and institutional impediments to the exercise of individual customers' risk preferences.

A central issue of the instant proceeding is the totality of certain recommendations to implement cross-subsidies in Ameren's rate design. The cross-subsidy question is one that has plagued the Illinois retail electric market, conveying distorted price signals that then inevitably lead to inefficiency and less-than-optimal investment in the electric infrastructure, further complicating policy decisions.

II.

ASSESSMENT OF AMEREN'S POST-TRANSITION PERIOD RATE DESIGN

Ameren correctly noted the successful restructuring of the Illinois retail electric market. (Ameren Ex. 2.0 at 453 - 461.) CNE agrees with Ameren that this docket is focused on mitigating rate impacts to residential space-heat customers and, to a lesser degree, lower-use non-residential customers, such as grain drying and certain pumping districts, who have experienced higher rate increases than other customers as the statutory nine-year rate freeze expired on January 2, 2007. (Ameren Ex. 2.0 at 487 - 489.)

However, unlike ComEd who concluded in Docket No. 07-0166 that comprehensive changes to ComEd's current rate design were unwarranted, Ameren proposes wholesale revisions to the Companies' rate design. NewEnergy also respectfully asks the Commission to modify Ameren's Redesign Proposals to include a future sunset date upon which the Commission would return rates to their current structure if circumstances permit. On this point, Staff seems to concur. (ICC Staff Ex. 1.0 at 947 -948.) Before addressing Ameren proposed changes to its rate design, a brief summary of the Lazare Rate Mitigation Plan, as mandated in ICC consolidated Docket No. 05-0160c, is warranted.

Lazare Rate Mitigation Plan

The Lazare Rate Mitigation Plan was adopted in ICC Docket No. 05-0160c and applies to residential and commercial customers eligible for Ameren's CPP-FP Auction Product (BGS-FP or Blended Segment). (CNE Ex. 1.0 at 127 - 129.) The Lazare Rate Mitigation Plan is applied on top of the retail rates that result from the translation of the auction clearing price through Ameren's Prism. The Lazare Rate Mitigation Plan requires Ameren to determine if the resulting final bundled retail rate of any customer supply group in the Blended Segment increased by a certain threshold percentage. As explained in CNE's Rebuttal Testimony, if the retail rate for any such customer group increased by an amount greater than that percentage, the retail rate of that group would be reduced to the threshold amount, and the excess Ameren revenue requirement would be collected by increasing the retail rates of all other Blended Segment customer groups to compensate Ameren for the difference. (*Id*. at 130 - 139.)

Importantly, from a competitive retail market perspective, the plan treats all customers in an equal manner and does not favor one class over another. In this way, the Lazare Mitigation Plan maintains competitive neutrality, and thereby does not undermine the development of the competitive market in the Ameren service territories.

III.

THE COMMISSION SHOULD REJECT AMEREN'S RECOMMENDED CHANGES TO ITS RATE DESIGN

In the instant proceeding, Ameren's proposes three (3) main changes to its rate design that includes changes in both supply and delivery charges. (Ameren Ex. 2.0 at 255.) First, Ameren proposes intra-class subsidies within the residential and small commercial customer classes. (Ameren Ex. 1.0 at 117 - 122) Second, Ameren proposes inter-class shifts of Basic Generation Service revenue responsibility from the residential class to the small generation service class. (Ameren Ex. 1.0 at 218 - 219) Third, Ameren proposes to modify all Delivery Services rates by shifting intra-class revenue responsibilities from non-summer to summer billing periods. (Ameren Exhibit 2.0 at 286 – 287.) Based upon a review of the record, the Commission must reject all three proposals.

A. Residential & Small Commercial Rate Redesign

Ameren proposes to create inter-class subsidies by shifting Basic Generation Service revenue responsibility from residential customers (BGS-1) to small commercial customers (BGS-2). (Ameren Ex. 3.0 at 34 - 38) Ameren proposes similar inter-class subsidies by shifting Delivery Services revenue responsibility from residential customers (DS-1) to small commercial customers (DS-2). (ICC Staff Ex. 1.0 at 541 - 542.)

The record is clear that the term "revenue responsibility" that was chosen by Ameren is simply another way to say "subsidy." Ameren acknowledges this fact by stating that, "…in each modified analysis, the DS/BGS-2 class was targeted to subsidize other classes." (Ameren Ex. 2.0 at 233 – 234.)

Under Ameren's plan for revenue neutrality, the proposed rate redesign requires that any reduction of the revenue responsibility of a given class be offset by an increase(s) to the revenue responsibility of another class. (Ameren Ex. 1.0 at 125 -127.) Staff concurs by noting that, barring reductions in the Ameren utilities' revenue requirements, "… the effort to address disproportionate increases for residential space heating customers requires higher rates for other customers. There is simply no way in this proceeding to address the residential space heating problems without negatively impacting other customers." (Staff Ex. 2.0 at 305 – 309.)

The net effect of this inter-class subsidy is to decrease the Ameren Illinois Utilities' BGS-1 rates and increase BGS-2 rates by roughly $50 million. In this way, Ameren would recover the Commission-authorized revenue levels for each Ameren utility – not only from residential customers but also from small commercial customers. Staff appears to endorse Ameren's inter-class subsidy proposal. (ICC Staff Exhibit 1.0 at 443 - 445.)

CNE respectfully request that the Commission reject Ameren's proposed imposition of cross-subsidies in the BGS-1/DS-1 and BGS-2/DS-2 rates.

B. Larger Non-Residential Rate Redesign

Ameren properly noted that the vast majority of larger non-residential customers, excluding low-usage customers like grain dryers, have switched from Ameren's service to third-party suppliers such as CNE. Specifically, Ameren notes that roughly 90% of DS-4 energy consumption is served by RESs and that roughly one-third of the BGS-3 eligible customer load has switched to RES service (Ameren Ex. 2.0 at 453 – 456, 472-473.) Given that most of the BGS-3 and BGS-4 eligible load has switched to RES service, Ameren has refrained from making any rate adjustments due to their perception that any redesign would only serve to accelerate customers' incentives to switch to RES service (if rates are adjusted upward) or create incentives for customers to remain with Ameren's BGS products (if rates are adjusted downward). (Ameren Ex. 2.0 at 473 – 474.) Both results, according to Ameren, are not desirable. (Id. at 481-482.) CNE agrees that there is no need to recommend changes to the rate design for larger non-residential customers.

C. DS-3 and DS-4 Rate Limiter

The demand-based charges for some DS-3 customers (over 150 kW to 1MW) and DS-4 (1MW+) can be relatively expensive since they establish high kW demands but have little kWh usage. (Ameren Ex. 2.0 at 487 – 491.) As a result, Ameren has proposed to mitigate rates for these larger low-usage customers, such as grain dryers. Under the proposal, a Rate Limiter would limit the monthly total cost of the Distribution Demand

Charge and Transformation Capacity Charge to 2 cents/kWh for DS-3 and DS-4 customers. (Id. at 493 – 498.)

Ameren's Rate Limiter proposal would only apply to those customers that limit their total kWh consumption during the four summer months to 20% or less of their annual kWh usage. According to Ameren, this would ensure that eligibility would be limited to those customers that do not make larger-than-normal contributions to system costs that are typically driven by summer loads. (Id. at 505 - 509.)

From a policy perspective, Ameren's Rate Limiter proposal violates cost-causation principles and energy-efficiency objectives. As the IIEC noted in Rebuttal Testimony, the Rate Limiter proposal shift supply costs because they use delivery service rates as a mitigation measure to transition from bundled service rates, which include supply, delivery and other associated costs, to an unbundled structure where supply and delivery charges are separated. (IIEC Ex. 1.0 at 224 – 227.) Indeed, the IIEC demonstrated how the GFA and Ameren proposals seek to collect additional revenues from certain delivery service customers to offset the combined bill impact of both supply and delivery charges of other customers. (IIEC Ex. 1.0 at 233 – 235) Staff concurs by noting that "other DS-3 and DS-4 customers will experience delivery service rate increases of approximately 3% and 0.5%, respectively to cover the shortfall corresponding to the rate limiter." (Staff Ex. 2.0 at 229 – 231.)

The Commission should avoid non cost-based incentives for customers to remain with Ameren or switch to a RES. Given the level of customer switching, the Commission should refrain from artificially increasing BGS-3 and BGS-4 rates because these commodity subsidies will merely serve as incentives for the targeted customer classes to switch to RESs. As customers switched away from Ameren, any projected revenue subsidization projected would be at risk of falling back to customers that remain with Ameren and are targeted to receive the subsidy through the automatic over / under cost recovery mechanism within Rider MV (Ameren Ex. 2.0 at 474 – 477.) This would be a step in the opposite direction of proper ratemaking.

However, some of our reticence is mitigated by Ameren's application of the DS-3 and DS-4 Rate Limiter in a competitively neutral manner. In other words, Ameren will be indifferent to customers' supply choices as Ameren will collect the same amount of revenues from the same customers, regardless of whether they are served on Ameren's BGS-3 / BGS-4 or by a RES. Having stated the above, however, the Commission should resist any such approach that would impose indefinite cross-subsidies into retail rate design.

IV.

THE COMMISSION SHOULD REJECT STAFF'S PROPOSAL TO ABANDON THE PRISM FOR THE 2008 AUCTION

Staff asserts that Ameren's Prism, which "translates" the Auction clearing prices into rates, caused "inordinate increases" for certain customers. (ICC Staff Ex. 1.0 at 40 – 41.) Staff avers that "potential adverse impacts can be averted by eliminating the role of the [Prism] in the upcoming auction." (Id. at 892 - 893.) As a result, Staff recommends that the Commission require Ameren to apply subsequent Auction clearing price fluctuations on an across-the-board administrative basis, and abandon Ameren's use of the Prism to set the 2008 supply charges for Ameren's Basic Generation Service rates.

Constellation NewEnergy is not unsympathetic to the motivations upon which Staff predicates their across-the-board application. Certain ratepayers are experiencing financial difficulties, and the Staff is seeking to offer relief to the broadest number of customers as soon as possible. Despite these laudable intentions, however, Constellation NewEnergy demonstrated why the Staff's proposed alterations constitute a step backwards on the road toward the development of competition and run counter to the manner in which retail rates have historically been established in Illinois. (CNE Ex. 1.0 at 264 - 267.) Moreover, as the IIEC noted, the ICC should not force additional charges onto other DS-3 and DS-4 customers because the record does not allow the Commission to determine the overall bill impact to delivery service customers forced to subsidize bill impact mitigation for blended customers. (IIEC Ex. 1.0, at 224 – 227). The Commission does not know the impact in overall bills for delivery service customers and, therefore, should not blindly push additional non-cost based costs onto them. (IIEC Ex. 1.0, at 263 – 272).

Ameren's rate prism was developed and fully litigated in ICC Docket No. 05-0160c. Moreover, wholesale suppliers, Ameren, RESs, and customers predicated their business decisions upon the assumptions built into the prism. (CNE Ex. 1.0 at .55 - 56) This is especially true for wholesale bidders who won 29-month and 41-month contracts for the Blended products. (Id. at 58-59.) Alteration or abandonment of the Prism would change the risks inherent to serving tranches that suppliers won under very different assumptions. (Id. at 278 - 280.) To alter or abandon the Prism now would be unfair to wholesale suppliers who would now serve customers under very different terms than those on which they bid and won tranches. (Id.) To shift course now, and abandon Ameren's prism, could produce negative consequences to the market and will run counter to the development of robust and liquid competitive wholesale and retail markets.

Similarly, alteration or abandonment of the Prism may alter customers' decisions to either stay on Ameren's default service or decide to take service from a RES. In addition, Staff's recommendation potentially disrupts longer-term contracts that customers executed with RESs as it fundamentally changes the assumptions upon which they relied -- assumptions based on the Commission's previous decision. Staff's proposal also fails to create a platform to promote the sustained interest in conservation, efficiency and demand-response that the Commission desires.

As the Commission weighs the evidentiary record, NewEnergy urges the Commission to be mindful to ensure that actions undertaken here do not adversely affect the continuing evolution of electric competition in Illinois. Ultimately, the success of the competitive retail market will be a function of the Commission's ability to establish BES rates that accurately track the all-in costs of electricity supply to Ameren's retail customers. (CNE Ex. 1.0 at 271 - 274.) Defying logic, Staff posits that the proposed rates represent a "meaningful step forward." (Staff Ex. 2.0 at 312.) The reality is that Staff's proposal would distort customer decision-making, and thereby discourage customers from managing their energy use as wisely as possible.

For all of these reasons, Constellation NewEnergy urges the Commission to reject Staff's proposal and retain Ameren's Prism.

V.

THE COMMISSION SHOULD REJECT STAFF'S PROPOSAL TO APPLY 2008 AUCTION PRICES IN AN ACROSS-THE-BOARD MANNER

In tandem with the previous recommendation to eliminate the Prisms, Staff proposes that the Commission order Ameren to incorporate any price fluctuations arising from the 2008 Auction by changing all supply charges by a percentage equal to the percent change in supply costs arising from the 2008 Auction. (ICC Ex. 1.0 at 893 -896.)

CNE continues to believe that accurate market pricing reduces the possibility for inter- and intra-class subsidies, encourages customers to consider conservation, load management, renewable energy and distributed resource alternatives, and generally provides customers greater control over their energy costs. Staff's across-the-board application violates these goals. As a result, Constellation NewEnergy respectfully asks the Commission to reject Staff's proposal to apply 2008 Auction price fluctuations on an across-the-board manner.

VI.

CONCLUSION

NewEnergy demonstrated why, from a policy perspective, forcing delivery services customers to subsidize bundled services customers would not reduce total service costs to electric customers in the Ameren service territories. Rather, NewEnergy showed how these proposals would merely distort the evaluations that customers must make in considering whether to select utility supply or alternative supply – ultimately leading to inefficiency and higher total costs of service. The viability of product options available to customers from Ameren is directly affected by the Utilities' default products and the attendant switching and eligibility rules tied to those products.

Constellation NewEnergy's goal is to provide customers with opportunities for greater savings on their energy bills and better service than they might otherwise obtain from the Utilities. No customer is ever forced to do business with a RES in the Ameren service territories. One of the clearest ways to mitigate prices is to create and retain a competitive retail market that supports the competitive suppliers' abilities to make offerings tailored to meet consumers' needs. By doing so, customers are empowered to create their own solutions. Passing supply-related costs onto delivery service customers undermines this goal.

Constellation NewEnergy respectfully requests that the Commission enter an Order in this proceeding that:

(1) Modifies Ameren's Rate Redesign Proposals to include a future sunset date upon which the Commission would return rates to their current structure if circumstances permit;

(2) Modifies Ameren's Rate Redesign Proposals to affect only the non-bypassed portion of the bill and not to affect the Prism during the term of the existing supply contracts;

(3) Rejects Staff's proposal to abandon utilization of the utilities' Prisms for purposes of translating the wholesale auction prices into retail rates in favor of an arbitrary across-the-board percentage increase/decrease;

(4) Rejects additional regulatory and institutional impediments to the exercise of individual customers' risk preferences; and

(5) Grants such further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

CONSTELLATION NEWENERGY, INC.

By: ____________________________________
One of Its Attorneys

David I. Fein
Senior Regulatory Counsel
Constellation NewEnergy, Inc.
550 W. Washington Blvd., Suite 300
Chicago, Illinois 60661
Telephone: (312) 704-8499
Facsimile: (312) 975-9270
E-mail: david.fein@constellation.com

DATED: June 29, 2007